

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

DAVID GEORGE ROOKER

2716 Bedford Road

Salt Lake City, UT 84119

Applicant

Respondent.

Case No.: SI-2010-7

OAH No.: 2010040229

DECISION AND ORDER

The attached Proposed Decision and Disciplinary Order is hereby adopted by the California Board of Accountancy of the Department of Consumer Affairs, as its Decision in the above-entitled matter.

This Decision shall become effective on February 4, 2011

It is so ORDERED on February 4, 2011



For The CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

DAVID GEORGE ROOKER
Salt Lake City, Utah 84119

Respondent.

Case No. SI-2010-7

OAH No. 2010040229

PROPOSED DECISION

On October 7, 2010, Administrative Law Judge Deidre L. Johnson, Office of Administrative Hearings (OAH), State of California, heard this matter in Sacramento, California.

Geoffrey Allen, Deputy Attorney General, Office of the Attorney General, Department of Justice, represented Patti Bowers (complainant).

David George Rooker (respondent) was present and represented himself.

Oral and documentary evidence was received, the record was closed and the matter was submitted on October 7, 2010.

FACTUAL FINDINGS

1. Complainant is the Executive Officer of the California Board of Accountancy (Board) and filed the Statement of Issues against respondent in her official capacity.
2. On or about January 26, 2009, respondent filed an application for licensure as a certified public accountant (CPA) with the Board. On July 9, 2009, the Board denied respondent's application, and on December 17, 2009, the Board filed the Statement of Issues. respondent thereafter requested a hearing, and in August 2010, the Board filed a notice scheduling the instant hearing.

Criminal Conviction

3. On June 30, 2008, in the Third Judicial District Court for Salt Lake County, State of Utah, in the matter entitled *State of Utah v. David George Rooker*, Case Number 081902884, respondent was convicted on a plea of guilty of violating Utah Code Annotated section 76-6-404 (theft, second degree), a Felony.

4. The court sentenced respondent by placing his plea of guilty in abeyance for three years on specified terms and conditions of probation, including a prohibition against being employed in a capacity to handle fiduciary funds belonging to others and an order to comply with a restitution agreement with the law firm. The court ordered that if respondent completed the abeyance terms, the case would be amended to a Class A Misdemeanor and would be dismissed. The court set a tracking review date for the case on June 30, 2011.

5. By order dated March 11, 2010, on respondent's motion, and with the consent of the victim and the stipulation of the State of Utah, the court terminated the plea in abeyance, reduced respondent's conviction to a Class A Misdemeanor, terminated probationary supervision, and closed the case.

Acts Involving Fraud, Dishonesty or Deceit

6. When he entered the above guilty plea, respondent expressly admitted the following facts in the plea agreement: Between June 1, 2000, and June 1, 2006, respondent was employed as a bookkeeper for the law firm of Rooker, Mohrman, Rawlings and Bailey. During that time, respondent embezzled monies in excess of \$400,000 from the firm. After the embezzlement was discovered, respondent admitted his involvement in the embezzlement to his employers and entered into a restitution agreement with them.

7. Respondent's father, C. Keith Rooker, was a founding partner in the law firm from whom respondent embezzled monies over the course of six years. At hearing, respondent was persuasive that the sum was approximately \$500,000. The firm had six partners, six to eight associate attorneys and four to six support staff. Respondent testified that he was the firm's "accountant and business manager" and received a salary of \$60,000 to \$70,000 a year. For six years, until June 2006, respondent used his position in the firm to write checks to himself to pay personal debts. Respondent concealed his embezzlement by regularly manipulating the income he reported to the firm that was then not accurately reported as revenue in the firm's tax returns. The firm trusted respondent to faithfully take care of its finances and only discovered the embezzlement in 2006 when documents were ordered from the firm's bank.

8. Respondent's course of embezzlement from his employer involved a profound breach of his fiduciary duties owed to the firm, and his acts of embezzlement and alteration of company revenue records involved sophisticated planning, intentional dishonesty, deceit, and fraud. By these acts, respondent intended to and did substantially benefit himself in an

amount over the years of about \$500,000. In addition, by these acts, respondent intended to and did substantially injure the law firm, its partners, and staff, including his father.

Other Matters of Mitigation, Aggravation, or Rehabilitation

9. Respondent established that he began making amends and repaying restitution to the law firm in 2006, well before the formal criminal charges were filed against him in April 2008. The other partners of the law firm have since departed, and the law firm is now Rooker Rawlins LLP, run by respondent's father, Mr. Rooker. As of the date of the hearing, respondent credibly established that he has repaid about \$60,000 in restitution to the firm and still owes about \$440,000 as of the hearing. The criminal court terminated respondent's probation prior to his completion of restitution to the victim.

10. The restitution agreement with the law firm provides for respondent's monthly payment of a certain sum calculated as a percentage of his gross monthly income in what respondent described as a "tiered payback" arrangement. If respondent makes less than \$3,000 per month, his payment due is 15 percent; if between \$3,000 and \$4,000, his payment due is 20 percent, and if his monthly income is over \$4,000, he is to pay 25 percent. The amount of restitution owed pursuant to the restitution agreement does not include or involve payment of any interest unless respondent defaults on his income reporting or payment obligations, in which case interest will be owed retroactive to 2006 at the rate of eight percent per annum. Respondent established that he has complied with the agreement and has not missed a payment, and his testimony was corroborated in a letter from Mr. Rooker.

11. Respondent was remorseful at hearing about both his criminal conviction and the underlying acts of embezzlement. By way of explanation, and not excuse, respondent explained that he was in a bad marital relationship with his wife, who spent excessive money, and respondent engaged in the thefts of funds to try to "keep up." In addition, he had a side business as one of several owners of a semi-professional football team that lost a lot of money.

12. Respondent received a bachelor's degree in accounting in 1992, from the University of Nevada, and a master's degree in business administration in 1994 from the University of Utah. Respondent does not and has never lived in California. Respondent has never held a license as a CPA in any state. In order to obtain a CPA license in Utah, respondent would have to obtain a master's degree in accountancy, which would require taking extra accounting courses. Respondent testified that, rather than take those extra educational courses in Utah, he decided to apply for the CPA license in California, where there are less stringent educational requirements. If respondent is issued a California CPA license, he would then be in a position to take advantage of Utah's license reciprocity arrangement with California, and become a CPA in Utah.

13. At the time of respondent's application for a California license in January 2009, respondent was employed as an auditor at HJ & Associates, LLC, located in Salt Lake City, Utah. When respondent was hired by HJ in 2007, he had not yet been convicted of the

crime of embezzlement. HJ gave respondent time to complete his examination as a California candidate for a certified public accountant license and respondent passed the California exam on October 11, 2008. After the Board declined to issue a license, respondent's position with HJ was terminated in March 2010.

13. Respondent is currently employed with an accounting/bookkeeping company owned by his new wife, called Cottonwood Consulting Company, and has been so employed since April 2010 in a full-time capacity. He does financial consulting and bookkeeping for the company's clients. Respondent's wife is aware of his criminal conviction and underlying circumstances. She did not appear at the hearing or submit a letter of reference.

14. From 2006 to 2008, respondent saw a therapist weekly, and has seen him bi-weekly since 2008. Respondent separated from and divorced his wife, with whom he has two minor children. In addition, from about 2006 to 2008, respondent met with his ecclesiastical bishop on a monthly basis. He is active in his local church and participates in its charitable activities. Respondent's therapist, Dee Hadley, MFT, submitted a letter of reference in which Mr. Hadley stated that he has seen significant progress in respondent's rehabilitation since 2006, including a positive effort to lead a productive, law-abiding life, and that Mr. Hadley believes respondent is ready to accept responsible licensure as a CPA.

15. Mr. Rooker submitted a letter of reference in which he stated that, due to his personal relationship with respondent, Mr. Rooker consistently recused himself in connection with the law firm's decisions regarding the consequences of respondent's conduct, including the criminal prosecution and the restitution agreement. Respondent corroborated that statement during his testimony. Mr. Rooker explained and supplemented other evidence that the firm (absent his participation) supported respondent's application for early termination of criminal probation. In addition, Mr. Rooker expressed his belief that respondent has made progress in overcoming the conviction, has made significant changes in his life, stabilized his family life, and has learned from his mistakes.

16. The objective of this proceeding is to protect the public, the certificated profession, maintain integrity, high standards, and preserve public confidence in Board certification. Certified public accountants must be honest, truthful and forthright. Respondent's criminal conviction and admitted underlying course of embezzlement demonstrate that he lacked such qualities while working for his father's law firm over a period of six years. Respondent has demonstrated some rehabilitation to date, particularly with respect to his change in attitude and recognition of wrongdoing, and is to be commended for the progress he has made. However, respondent has only been released from probation for about seven months, and has only repaid about 15 percent of the total restitution owed to the victim of his actions. Respondent did not submit any evidence that he has taken any educational courses relating to the field of accountancy in recent years. His plan to avoid the CPA educational requirements in Utah is somewhat inconsistent with his professed rehabilitation and commitment to excellence in the field. Insufficient time has passed for respondent to establish that he is capable of meeting the high standards of the

public accountancy profession and is trustworthy of handling the financial affairs of others with honesty and integrity.

LEGAL CONCLUSIONS

1. In a proceeding involving the issuance of a license, the burden of proof is on the applicant to show that he or she is qualified to hold the license. (*Martin v. Alcoholic Beverage Control Appeals Board* (1959) 52 Cal.2d 259, 264-265.) In the absence of specific legal authority to the contrary, the standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

2. Business and Professions Code section 480 provides in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

- (1) Been convicted of a crime ...
- (2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.
- (3)(A) Done any act that if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made

3. Business and Professions Code section 5080 provides that a certified public accountant license shall be granted by the Board if a qualified person has not committed acts or crimes constituting grounds for denial under section 480 above.

4. Business and Professions Code section 5100 provides in part that, after notice and hearing the Board may revoke, suspend, or refuse to renew any permit or certificate for unprofessional conduct, which is defined to include one or any combination of the following causes:

(a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant ...

[¶] ... [¶]

(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind; and

[¶] ... [¶]

(k) Embezzlement, theft, misappropriation of funds or property, or obtaining money, property, or other valuable consideration by fraudulent means or false pretenses.

5. California Code of Regulations, title 16, section 99, provides in part:

For the purposes of denial . . . of a certificate or permit . . . a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a certified public accountant . . . if to a substantial degree it evidences present or potential unfitness of a certified public accountant . . . to perform the functions authorized by his certificate . . . in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(a) Fiscal dishonesty or breach of fiduciary responsibility of any kind

Rehabilitation

6. Rehabilitation is a "state of mind." The law looks with favor upon rewarding one who has achieved reformation and regeneration with the opportunity to serve. See, *Pacheco v. State Bar* (1987) 43 Cal. 3d 1041, 1058. And, the evidentiary significance of an applicant's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. *Kwasnik v. State Bar* (1990) Cal. 3d 1061, 1070.

7. California Code of Regulations, title 16, section 99.1 provides in part:

When considering the denial of a certificate or permit under Section 480 of the Business and Professions Code . . . the board, in evaluating the rehabilitation of the applicant and his present eligibility for a certificate or permit, will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Criminal record and evidence of any act(s) committed subsequent to the act(s) or offense(s) under consideration which also could be considered as grounds for denial, suspension or revocation.

(3) The time that has elapsed since commission of the act(s) or offense(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant or licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant or licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the applicant or licensee.

8. As set forth in Factual Findings 1 through 5, and Legal Conclusions 1 through 7, cause for denial of respondent's application for a license was established for violation of Business and Professions Code section 480, subdivision (a)(1) and 5080, based on Respondent's June 2008 felony theft conviction. The crime of theft is substantially related to the qualifications, functions or duties of a CPA licensee who is charged to handle the sensitive and confidential financial affairs of others with honesty and integrity.

9. As set forth in Factual Findings 1 through 8, and Legal Conclusions 1 through 8, cause for denial of respondent's application for a license was established for violation of Business and Professions Code section 480, subdivision (a)(2) and 5080, based on the acts and omissions underlying respondent's embezzlement by which he used intentional deceit, dishonesty, deception and fraud to substantially benefit himself and cause substantial financial harm to his employer.


10. As set forth in Factual Findings 1 through 8, and Legal Conclusions 1 through 9, cause for denial of respondent's application for a license was established for violation of Business and Professions Code section 480, subdivision (a)(3)(A), and section 5100, subdivisions (a), (i), and (k), based on the acts and omissions underlying respondent's embezzlement, because if those acts had been done by a licensee, they would be grounds for suspension or revocation of that license.

11. Respondent's conduct that led to his conviction was egregious and involved both fiscal dishonesty and breach of his fiduciary responsibility as an employee of the company. As set forth in Factual Findings 1 through 16, and Legal Conclusions 1 through 10, respondent has made progress in his rehabilitation but has been released from criminal probation for less than a year, and has significant restitution yet to pay. He has not taken any remedial educational courses in accountancy to refresh his knowledge of proper and ethical practices. In light of respondent's serious breach of trust on both a fiduciary and familial level for over six years, the evidence does not support granting him a license at this time. Further time should pass, during which respondent may demonstrate that he has been rehabilitated sufficiently to be entrusted with the responsibilities of a licensed CPA.

ORDER

The application for licensure of Respondent DAVID GEORGE ROOKER is denied.

Dated: November 8, 2010


DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

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9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
12 Against:

Case No. SI-2010-7

13 **DAVID GEORGE ROOKER**
2716 Bedford Road
14 Salt Lake City, UT 84119

STATEMENT OF ISSUES

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Patti Bowers (Complainant) brings this Statement of Issues solely in her official
20 capacity as the Executive Officer of the California Board of Accountancy, Department of
21 Consumer Affairs.

22 2. On or about January 26, 2009, the California Board of Accountancy (Board),
23 Department of Consumer Affairs received an Application for a Certified Public Accountant
24 License (Application) from David George Rooker (Respondent). On or about January 7, 2009,
25 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and
26 representations in the Application. The Board denied the Application on July 7, 2009.

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JURISDICTION

3. This Statement of Issues is brought before the Board, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license.

5. Section 5080 of the Code states:

The "certified public accountant" license shall be granted by the board to any person who meets the requirements of this article, has not committed acts or crimes constituting grounds for denial of a license under Section 480, and files an application for licensure on a form provided by the board.

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1 6. Section 5100 of the Code, in pertinent part, states:

2 After notice and hearing the board may revoke, suspend, or refuse to renew any
3 permit or certificate granted under Article 4 (commencing with Section 5070) and
4 Article 5 (commencing with Section 5080), or may censure the holder of that permit
5 or certificate for unprofessional conduct that includes, but is not limited to, one or any
6 combination of the following causes:

7 (a) Conviction of any crime substantially related to the qualifications, functions
8 and duties of a certified public accountant or a public accountant.

9

10 (i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

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12 (k) Embezzlement, theft, misappropriation of funds or property, or obtaining
13 money, property, or other valuable consideration by fraudulent means or false
14 pretenses.

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16 7. Section 5106 of the Code states:

17 A plea or verdict of guilty or a conviction following a plea of nolo contendere is
18 deemed to be a conviction within the meaning of this article. The record of the
19 conviction shall be conclusive evidence thereof. The board may order the certificate
20 or permit suspended or revoked, or may decline to issue a certificate or permit, when
21 the time for appeal has elapsed, or the judgment of conviction has been affirmed on
22 appeal or when an order granting probation is made, suspending the imposition of
23 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of
24 the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea
25 of not guilty, or setting aside the verdict of guilty or dismissing the accusation,
26 information or indictment.

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1 FIRST CAUSE FOR DENIAL OF APPLICATION

2 (Criminal Conviction)

3 8. Respondent's Application is subject to denial under Code sections 5080 and 480,
4 subd. (a)(1) in that on or about June 30, 2008, in a criminal proceeding entitled *State of Utah v.*
5 *David George Rooker* in Third Judicial District Court in and for Salt Lake County, State of Utah,
6 Case Number 081902884, Respondent was convicted by a plea of guilty of violating Utah Code
7 Annotated section 76-6-404 (theft, second degree), a felony. The circumstances are as follows:

8 a. Between about June 1, 2000, and continuing through about June 1, 2006,
9 Respondent was employed as the bookkeeper for the law firm of Rooker, Mohrman, Rawlings
10 and Bailey in Salt Lake City, Utah. During this time Respondent embezzled more than four
11 hundred thousand dollars (\$400,000.00) from the firm.

12 b. On or about June 30, 2008, Respondent was sentenced as follows: three years
13 probation.

14 SECOND CAUSE FOR DENIAL OF APPLICATION

15 (Act Involving Fraud, Dishonesty of Deceit)

16 9. Respondent's Application is subject to denial under Code sections 5080 and 480,
17 subd. (a)(2) in that Respondent acted with dishonesty, fraud, or deceit with the intent to
18 substantially benefit himself. The circumstances are detailed above in paragraph 8.

19 THIRD CAUSE FOR DENIAL OF APPLICATION

20 (Act if Done by Licentiate)

21 10. Respondent's application is subject to denial under Code sections 5080; 480, subd.
22 (a)(3); and 5100, subds. (a), (i) and (k) in that Respondent performed acts that if done by a
23 licentiate of the business or profession in question, would be grounds for suspension or revocation
24 of license. The circumstances are detailed above in paragraph 8.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the California Board of Accountancy issue a decision:

- 4 1. Denying the application of David George Rooker for a Certified Public Accountant
5 License;
6 2. Taking such other and further action as deemed necessary and proper.

7 DATED: December 17, 2009

8 Patti Bowers
9 PATTI BOWERS
10 Executive Officer
11 California Board of Accountancy
12 Department of Consumer Affairs
13 State of California
14 Complainant

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